

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

Petition of Union Electric Company, d/b/a	)	
AmerenUE seeking approval to Change	)	
the Trustee for its Tax Qualified and	)	Docket No. 03-0660
Non-Tax Qualified Decommissioning	)	
Trust Funds and seeking approval of	)	
Related changes to the Trust Agreements	)	

**PROPOSED ORDER**

DATED: December 17, 2003

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**PROPOSED ORDER**

By the Commission:

**I. INTRODUCTION**

On October 23, 2003, Union Electric Company, d/b/a AmerenUE (“AmerenUE” or “Company”) filed a verified petition with the Illinois Commerce Commission (“Commission”), pursuant to 220 ILCS 5/8-508.1, seeking an Order approving changes to its (i) Second Amended and Restated Tax Qualified Decommissioning Trust Agreement (“2<sup>nd</sup> Amended Tax Qualified Trust Agreement”); (ii) Second Amended and Restated Non-Tax Qualified Decommissioning Trust Agreement (“2<sup>nd</sup> Amended Non-Tax Qualified Trust Agreement”); and (iii) Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear Decommissioning Trust Funds (hereinafter “Investment Guidelines”). In its petition, AmerenUE also provided notice to the Commission that the equity investment manager for its tax qualified and non-tax qualified decommissioning trust funds had changed due to recent mergers in the banking industry.

Pursuant to due notice, on November 17, 2003 a status hearing was held in this matter and on November 24, 2003, an evidentiary hearing was held before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois. Commission Staff (“Staff”) and AmerenUE were represented at the status hearing and at the evidentiary hearing. No other parties petitioned to intervene in this proceeding.

A total of two witnesses testified at the evidentiary hearing. Kevin L. Redhage, Finance Professional in the Financial Planning and Investments Department at Ameren Services Company testified on behalf of AmerenUE. Ameren Services Company is an affiliate of AmerenUE and a subsidiary of Ameren Corporation that provides various administrative and technical services for and on behalf of AmerenUE. Ronald Linkenback, Electrical Engineer in the Electric Section of the Engineering Department of the Commission’s Energy Division testified on behalf of the Staff.

At the end of the November 24 hearing, no contested issues existed; accordingly, neither AmerenUE nor Staff considered the filing of briefs necessary. At the end of the evidentiary hearing, the record was marked “Heard and Taken.”

## II. BACKGROUND

AmerenUE is a Missouri corporation duly organized and existing under the laws of the state of Missouri, with its principal place of business located at 1901 Chouteau Avenue St. Louis, Missouri 63103. AmerenUE owns and operates a nuclear power plant in the state of Missouri and uses the power and energy generated therefrom to provide retail electric service to customers in the states of Missouri and Illinois. As such, AmerenUE is a public utility within the meaning of Section 3-105 of the Public Utilities Act, 220 ILCS 5/3-105.

Over three years ago, on October 13, 2000, AmerenUE filed a verified petition with the Commission in Docket No. 00-0664 seeking, *inter alia*, approval of: (i) various changes to the 2<sup>nd</sup> Amended Tax Qualified Trust Agreement; (ii) various changes to the First Amended and Restated Non-Tax Qualified Decommissioning Trust Agreement, (iii) various changes to the Investment Guidelines, and approval of a new trustee of the tax qualified and non-tax qualified decommissioning trust funds. On December 6, 2000, the Commission issued its order in Docket No. 00-0664 approving the requested changes, without exception.

Simultaneous to the filing made by AmerenUE with the Commission in Docket No. 00-0664, AmerenUE also requested from the Missouri Public Service Commission (“MoPSC”), in accordance with Missouri law, similar approvals of the requested changes to the 2<sup>nd</sup> Amended Tax Qualified Trust Agreement, the Investment Guidelines and a change in trustee of the tax qualified decommissioning trust fund. On December 14, 2000, the MoPSC issued an order that did not approve all of the changes requested by AmerenUE.

To implement the change in trustee, the changes to the 2<sup>nd</sup> Amended Tax Qualified Trust Agreement, and the changes to the Investment Guidelines, AmerenUE needed approvals from the Commission and the MoPSC, which the Company did not receive. As a result, the Company could not implement the changes to the 2<sup>nd</sup> Amended Tax Qualified Trust Agreement and it could not implement all of the changes to the Investment Guidelines. Since both jurisdictions approved the change in trustee, the Company was able to make that change by assigning the 2<sup>nd</sup> Amended Tax Qualified Trust Agreement to the new trustee – The Bank of New York (hereinafter “BNY”). Furthermore, since the requirement to maintain a non-tax qualified trust is purely an Illinois requirement, the 2<sup>nd</sup> Amended Non-Tax Qualified Trust Agreement was not submitted to the MoPSC for approval. Therefore, BNY was able to execute the 2<sup>nd</sup> Amended Non-Tax Qualified Trust Agreement approved by the Commission in Docket No. 00-0664.

Because some of the changes to the 2<sup>nd</sup> Amended Tax Qualified Trust Agreement were sought at the request of BNY, BNY agreed to accept assignment of the 2<sup>nd</sup> Amended

Tax Qualified Trust Agreement provided the Company was willing to pursue the changes to the 2<sup>nd</sup> Amended Tax Qualified Trust Agreement at a later date.

In December of 2002, the United States Nuclear Regulatory Commission (“NRC”) published a final rule that modified the Code of Federal Regulations (“CFR”) by revising paragraphs 10 CFR 50.75(e)(1)(i) and (ii) and adding a new paragraph 10 CFR 50.75(h). These modifications address utility and non-utility owned decommissioning trust fund requirements and requirements to notify the NRC before making any disbursements from the trust funds. The NRC final rule also requires that specific language, as set forth in the final rule, be added to decommissioning trust agreements. The December 2002 rule requires companies that operate a nuclear power plant to implement the NRC changes by December 24, 2003.

### **III. PARTIES’ POSITIONS**

In his Direct Testimony in this proceeding, Mr. Redhage set forth AmerenUE’s proposed changes to the Investment Guidelines as well as changes to the 2<sup>nd</sup> Amended Tax Qualified Trust Agreement and the 2<sup>nd</sup> Amended Non-Tax Qualified Trust Agreement that were requested by BNY and that were required to comply with the NRC rule. Mr. Redhage also set forth in his Direct Testimony other miscellaneous changes proposed by AmerenUE to rid the trust agreements of redundant or unnecessary language and to incorporate amendments that were made to the 2<sup>nd</sup> Amended Tax Qualified Trust Agreement. Mr. Redhage incorporated the changes and amendments to the 2<sup>nd</sup> Amended Tax Qualified Trust Agreement into a 3<sup>rd</sup> Amended and Restated Tax Qualified Decommissioning Trust Agreement (“3<sup>rd</sup> Amended Tax Qualified Trust Agreement”), which was filed as part of his Direct Testimony. Mr. Redhage incorporated the changes to the 2<sup>nd</sup> Amended Non-Tax Qualified Trust Agreement into a 3<sup>rd</sup> Amended and Restated Non-Tax Qualified Decommissioning Trust Agreement (“3<sup>rd</sup> Amended Non-Tax Qualified Trust Agreement”), which also was filed as part of his Direct Testimony.

After filing his Direct Testimony, Mr. Redhage was contacted by the Staff regarding four proposed changes to the 3<sup>rd</sup> Amended Non-Tax Qualified Trust Agreement and one proposed change to the 3<sup>rd</sup> Amended Tax Qualified Trust Agreement. In response to Staff’s proposed changes, AmerenUE proposed one additional change to the 3<sup>rd</sup> Amended Non-Tax Qualified Trust Agreement. Thereafter, in Supplemental Direct Testimony filed by Mr. Redhage, the proposed changes by Staff and AmerenUE were incorporated into a revised 3<sup>rd</sup> Amended Non-Tax Qualified Trust Agreement and a revised 3<sup>rd</sup> Amended Tax Qualified Trust Agreement. The Staff did not request that any changes be made to the Investment Guidelines filed as part of Mr. Redhage’s Direct Testimony.

In response to the Direct and Supplemental Direct Testimonies filed by AmerenUE witness Redhage, the Staff filed the Direct Testimony of Mr. Ronald Linkenback. In his Direct Testimony, Mr. Linkenback testified that after thorough review by Ms. Rochelle Phipps of the Financial Analysis Division’s Finance Department, Ms. Leslie Pugh of the Financial Analysis Division’s Accounting Department and

himself, Staff found no reason to dispute the changes codified in the 3<sup>rd</sup> Amended Tax Qualified Trust Agreement and the 3<sup>rd</sup> Amended Non-Tax Qualified Trust Agreement filed in the Supplemental Direct Testimony of AmerenUE witness Redhage.

Mr. Linkenback also testified the Staff recommends that AmerenUE be granted an Order approving the 3<sup>rd</sup> Amended Tax Qualified Trust Agreement, the 3<sup>rd</sup> Amended Non-Tax Qualified Trust Agreement and the Investment Guidelines. Mr. Linkenback further testified that the Order approving AmerenUE's 3<sup>rd</sup> Amended Tax Qualified Trust Agreement and the Investment Guidelines should be conditioned on AmerenUE obtaining an Order from the Missouri Public Service Commission approving these documents.

The parties agreed during informal discussions at the hearing that in the event the MoPSC does not subsequently issue an Order approving these documents, this Order issued by the Commission approving the 3<sup>rd</sup> Amended Tax Qualified Trust Agreement and the Investment Guidelines should be void. Moreover, to apprise the Commission regarding any subsequent MoPSC Order, AmerenUE agreed to file such MoPSC Order, including the 3<sup>rd</sup> Amended Tax Qualified Trust Agreement and the Investment Guidelines, immediately with the Commission with a copy to Staff.

#### **IV. FINDINGS AND ORDERING PARAGRAPH**

The Commission, having considered the entire record, is of the opinion and finds that:

- (1) AmerenUE is a corporation duly organized and existing under the laws of Missouri, and owns and operates a nuclear power plant and supplies electricity therefrom to the public in Illinois; as such, AmerenUE is a public utility within the meaning of Section 3-105 of the Public Utilities Act;
- (2) pursuant to 220 ILCS 5/8-508.1, the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (3) the facts recited and conclusions reached in this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (4) all of the parties to this proceeding support the approval of the proposed changes codified in the 3<sup>rd</sup> Amended and Restated Tax Qualified Decommissioning Trust Agreement, the 3<sup>rd</sup> Amended and Restated Non-Tax Qualified Decommissioning Trust Agreement and the Investment Guidelines;
- (5) the approval of the proposed changes codified in the 3<sup>rd</sup> Amended and Restated Tax Qualified Decommissioning Trust Agreement and the

Investment Guidelines should be conditioned upon the Missouri Public Service Commission approving the same without modification;

- (6) as of the date hereof, the Missouri Public Service Commission has not issued an Order regarding the 3<sup>rd</sup> Amended and Restated Tax Qualified Decommissioning Trust Agreement and the Investment Guidelines.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the 3<sup>rd</sup> Amended and Restated Tax Qualified Decommissioning Trust Agreement, the 3<sup>rd</sup> Amended and Restated Non-Tax Qualified Decommissioning Trust Agreement and the Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear Decommissioning Trust Funds are hereby approved.

IT IS FURTHER ORDERED that the approval of the 3<sup>rd</sup> Amended and Restated Tax Qualified Decommissioning Trust Agreement and the Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear Decommissioning Trust Funds shall hereby be void *ab initio* unless the Missouri Public Service Commission approves, without modification, the same 3<sup>rd</sup> Amended and Restated Tax Qualified Decommissioning Trust Agreement and the same Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear Decommissioning Trust Funds that have been approved herein.

IT IS FURTHER ORDERED that AmerenUE shall file with the Commission with a copy to Staff, the Order issued by the Missouri Public Service Commission and a copy of the 3<sup>rd</sup> Amended and Restated Tax Qualified Decommissioning Trust Agreement and the Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear Decommissioning Trust Funds, as approved, modified or disapproved by the Missouri Public Service Commission Order, immediately after AmerenUE becomes aware that such an Order has been issued.

IT IS FURTHER ORDERED that subject to the provisions of 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 17<sup>th</sup> day of December, 2003.

(SIGNED) EDWARD C. HURLEY

Chairman